

PUERTO RICO DEPARTMENT OF HEALTH

PUBLIC WATER SUPPLY SUPERVISION PROGRAM

Estado Libre Asociado de Puerto Rico
Departamento de Salud

FAX COVER

Date : February 6, 2002
Num. of Pages : 3
To : Mr. Mike Lowy (fax: 1-212-637-3891)
Location : EPA REGION 2
From : Eng. Zuleima Rodríguez
Subject : Adopt by reference issue

Message : Enclosed you will find a copy of the letter we sent to the Attorney General related to the above subject. Please call if you have any questions.

Zuleima

P.D. I'm still working to find out how long (estimate) will it take to have an official translation of Reg. 6090.

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*COMMONWEALTH OF PUERTO RICO
DEPARTMENT OF HEALTH
OFFICE OF THE SECRETARY*



January 23, 2002

Mrs. Anabelle Rodríguez
Attorney General
Department of Justice
P. O. Box 192
San Juan, Puerto Rico 00902

Dear Mrs. Rodríguez:

The Public Water Supply Supervision Program (PWSS), of the Puerto Rico Department of Health, (PRDOH), has submitted a primacy revision application to the US Environmental Protection Agency, (EPA), for two new drinking water regulations promulgated by the EPA: The Consumer Confidence Rule (CCR), and a rule covering several aspects of primacy revisions. To ensure and retain primacy, the Department must demonstrate that Commonwealth rules are "no less stringent", than their federal counterparts, therefore, the General Regulation for Environmental Health was approved on February 4, 2000, empowering us to adopt by reference, all federal regulations, (i.e., a practice of incorporation by reference- See Attorney General Opinion, dated August 21, 2000).

During the course of EPA's legal review of our most recent revision application, they noted that our method of incorporation by reference, included the prospective adoption of future federally-promulgated regulations, meaning that the Department automatically incorporates any new federal drinking water regulation, by reference, into its General Regulation Num. 6090. The issue according the EPA, is that future federal rules should not be adopted prospectively without intervening decision making action by the appropriate Commonwealth legislative or executive body, as this action may represent an unconstitutional delegation of legislative authority.

Mrs. Anabelle Rodríguez,

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In order for prospective adoption to be acceptable to EPA, an opinion must be provided by the Attorney General's Office, stating that such regulations, (those allowing prospective adoption by reference) are valid under Puerto Rico's Constitution and statutes. The opinion must assure that automatic adoption of all future EPA drinking water regulations into our General Regulation Num. 6090, without any further decision by the legislature or the PRDOH, is not in conflict with PR's Constitution, statutes and/or opinions of PR Supreme Court. Your opinion should provide appropriate citation to constitutional, statutory and case law.

As a matter of fact, in order to grant us the primacy enforcement responsibility, the Commonwealth must adopt drinking water regulations which are no less stringent than the National Primary Drinking Water regulations, as we have already stated.

From a programmatic perspective, this Department believes that additional intervening action, (e.g. providing public notice and comments), for each and every new federal drinking water regulation is not necessary, since under our current Regulation we have clearly stated that the Commonwealth intends to automatically adopt any future final rule promulgated by EPA, concerning the National Primary Drinking Water Regulations. As such, through that agency's extensive notice, review and comment process, the people of the Commonwealth are afforded ample opportunity to review future regulations. Besides, PRDOH conducts extensive outreach in PR on upcoming EPA's regulations through meetings, workshops and conferences.

Hoping to hear from you soon regarding our request, I remain.

Sincerely,



Johnny Rullan, FACPM, M.D.
Secretary of Health

ML/OS/cm/jc/Sec Justice Opin re Reg. 6090

Cc: Mayra Maldonado, Esq.
Mrs. Olga Rivera
Mr. Alfredo Casta Vélez
Eng. Carl Soderberg, EPA, Caribbean Branch
Eng. Bruce Kiselica, EPA, Region 2